

LA PLATA ELECTRIC ASSOCIATION, INC.

IBLA 84-243

Decided August 2, 1984

Appeal from a decision of the Montrose, Colorado, District Office, Bureau of Land Management, establishing rental for a powerline right-of-way. C-30380.

Set aside and remanded.

1. Federal Land Policy and Management Act of 1976: Rights-of-Way -- Fees -- Rights-of-Way: Federal Land Policy and Management Act of 1976

A decision imposing rental charges on a Rural Electrification Act cooperative for a powerline right-of-way grant, pursuant to sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1982), will be set aside where subsequent to the decision that section is amended, P.L. 98-300, 98 Stat. 215 (1984), to provide that rights-of-way shall be granted, without rental fees, for electric facilities financed pursuant to the Rural Electrification Act of 1936.

APPEARANCES: Steve Gregg, Right-of-Way Agent, La Plata Electric Association, Inc., Durango, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

La Plata Electric Association, Inc. (La Plata), has appealed from the December 1, 1983, decision of the Montrose, Colorado, District Office, Bureau of Land Management (BLM), establishing rental for a powerline right-of-way. The decision recited that La Plata had been granted a right-of-way on September 21, 1981, for a 7.2 kV overhead distribution powerline; that La Plata had submitted \$25 as an advance rental deposit; and that fair market value had been determined to be \$200 per 5-year period beginning September 21, 1981, and ending on September 20, 1986. BLM called on La Plata to pay the balance of \$175.

La Plata paid the money and filed this appeal. It contends that it should be eligible for no fee or a fee of less than fair market value because it qualifies under 43 CFR 2803.1-2(c)(2). La Plata concludes its statement of reasons, as follows:

Therefore, La Plata Electric Association, Inc. feels that all of the statement of reasons should be included in the decision

process to better assist the authorized officer in making a fair and equitable decision of any rental fee, no fee, or a fee less than fair market rental for right-of-way received by REA [Rural Electrification Act] cooperatives, rather than basing their decision strictly on one similarity, being that the principal source of revenue is customer charges.

[1] The Board has previously construed section 504(g) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1764(g) (1982) 1/ and 43 CFR 2803.1-2, 2/ as restricting free use to agencies of the Federal Government and to those situations where the charge is token, and the cost is unduly large. Likewise, we determined that the exclusionary language of 43 CFR 2803.1-2(c)(1) eliminates cooperatives from consideration for reduced charges under any category of 43 CFR 2803.1-2(c). Tri-State Generation & Transmission Association, Inc., 63 IBLA 347, 89 I.D. 227 (1983). Since that case the Board has reaffirmed those rulings on a number of occasions. See, e.g., Colorado-Ute Electric Association, Inc., 79 IBLA 53 (1984); San Miguel Power Association, 71 IBLA 213 (1983).

Those holdings would be controlling in this case, except that on May 25, 1984, Congress amended section 504(g) of FLPMA, 43 U.S.C. § 1764 (1982), by inserting the following sentence at the end of the subsection:

Rights-of-way shall be granted, issued, or renewed, without rental fees, for electric or telephone facilities financed pursuant to the Rural Electrification Act of 1936, as amended, or any

1/ That section reads in pertinent part:

"(g) The holder of a right-of-way shall pay annually in advance the fair market value thereof as determined by the Secretary granting, issuing, or renewing such right-of-way: \* \* \* Rights-of-way may be granted, issued, or renewed to a Federal, State, or local government or any agency or instrumentality thereof, to nonprofit associations or nonprofit corporations which are not themselves controlled or owned by profitmaking corporations or business enterprises, or to a holder where he provides without or at reduced charges a valuable benefit to the public or to the programs of the Secretary concerned, or to a holder in connection with the authorized use or occupancy of Federal land for which the United States is already receiving compensation for such lesser charge, including free use as the Secretary concerned finds equitable and in the public interest."

2/ The regulation, 43 CFR 2803.1-2, provides:

"(c) No fee, or a fee less than fair market rental, may be authorized under the following circumstances:

"(1) When the holder is a Federal, State or local government or agency or instrumentality thereof, excluding municipal utilities and cooperatives whose principal source of revenue is customer charges.

"(2) When the holder is a nonprofit corporation or association which is not controlled by or is not a subsidiary of a profit making corporation or business enterprise.

"(3) When a holder provides without charge, or at reduced rates, a valuable benefit to the public or to the programs of the Secretary." (Emphasis added.)

extensions from such facilities: Provided, That nothing in this sentence shall be construed to affect the authority of the Secretary granting, issuing, or renewing the right-of-way to require reimbursement of reasonable administrative and other costs pursuant to the second sentence of this subsection. [Emphasis in original.]

P.L. 98-300, 98 Stat. 215.

Thus, LaPlata, as an REA cooperative, is covered by the statutory amendment, and it is entitled to the right-of-way grant without rental fee charge. The amendment provides, however, that the Secretary may require reimbursement of reasonable administrative and other costs.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case is remanded.

Bruce R. Harris  
Administrative Judge

We concur:

Gail M. Frazier  
Administrative Judge

C. Randall Grant, Jr.  
Administrative Judge.

